

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

**CHRISTOPHER JAMES WALKER, KIM
STERLING, and ERNIE FISHER**, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

**HIGHMARK BCBSD HEALTH
OPTIONS, INC.; COTIVITI INC.**

Defendant.

Civil Case No.: 20-cv-1975

Hon. Christy Criswell Wiegand

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO CERTIFY THE
SETTLEMENT CLASS FOR SETTLEMENT PURPOSES AND FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, the Parties in the above-captioned litigation have advised the Court that they have settled the litigation, the terms of which have been memorialized in a settlement agreement ("Settlement Agreement");

WHEREAS, this Court granted preliminary approval and preliminary certified a class for Settlement purposes on December 13, 2022;

WHEREAS, Plaintiffs have applied to this Court through an unopposed motion for an order (1) finally certifying the Settlement Class for settlement purposes; (2) granting final approval of the Settlement Agreement resolving all claims in the above-captioned matter; and (3) awarding fees, costs, and service awards;

WHEREAS, the Court has read and considered Plaintiffs' unopposed Motion to Certify the Settlement Class for Settlement Purposes and for Final Approval of Class Action Settlement ("Motion"), the points and authorities and exhibits submitted therewith, the Settlement Agreement, and all of the supporting documents; and the Motion for Attorneys' Fees, Costs, and Service awards; and good cause appearing:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.
2. Plaintiffs' Motion is **GRANTED**. It appears to this Court that the Settlement Class satisfies the elements of Fed. R. Civ. P. 23 and is fair, adequate, and reasonable.

3. The proposed Settlement Class is hereby finally certified pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for purposes of settlement. The Settlement Class is defined as:
 - A. During the Class Period, all persons within the United States who are subscribers or primary users of a cellular telephone number to which Defendant Highmark BCBSD Health Options Inc. placed (or had placed on its behalf by Defendant Cotiviti, Inc.) a telephone call using a pre-recorded or artificial voice,
 - 1) when such a call to that telephone number had previously resulted in (a) a “WRONG_NUMBER” disposition or (b) a “MSG_DECLINED” disposition without a subsequent disposition of “CORRECT_PERSON” or “MSG_HUMAN” and
 - 2) when at least one subsequent call to that telephone number had the disposition “WRONG_NUMBER”, “MSG_MACHINE”, “CORRECT_PERSON”, “MSG_HUMAN”, “HANGUP”, “NO_CONTINUE”, or “MSG_DECLINED”.
 - B. Excluding those persons who *only* received calls as part of a COVID Campaign, as well as Defendants and any entities in which Defendants have a controlling interest; Defendants’ agents and employees; any Judge and Magistrate Judge to whom this action is assigned and any member of their staffs and immediate families.
4. The Court finally appoints Jeremy M. Glapion as Class Counsel, and Plaintiffs Christopher Walker, Kim Sterling, and Ernie Fisher as representatives of the Settlement Class;
5. The Court further finds that, as more fully set out in its opinion accompanying this Order, the factors set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) weigh in favor of final approval of the Settlement.
6. Accordingly, the Court **GRANTS** final approval to the Settlement Agreement.
7. Finally, the Court further **GRANTS** Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards; Class Counsel is hereby awarded \$616,666.67 in fees and \$21,161.52 in Costs; Plaintiff Walker is awarded \$10,000 for his service to the class; Plaintiff Fisher is awarded \$2,500 for his service to the Class; and Plaintiff Sterling is awarded \$2,500 for her service to the Class.
8. All amounts awarded hereunder shall be paid in accordance with the Settlement Agreement.

ORDERED this _____ day of _____, 2023.

Hon. Christy C. Wiegand
United States District Judge

